

Professionalism and Student Protest

by Paul D. Carrington

The attributes of professionalism, which are the hallmark of the lawyer's calling, can be used to help institutions and the public understand and effectively deal with student protest and disorder. An unruffled, low-keyed reaction is needed in most cases, with the law's processes reserved for occasions that cannot be handled as intramural clashes.

IN MY ARTICLE in this *Journal* in December of 1968 (page 1167, "Professionalism and Our Troubled Times") I emphasized the role of lawyers in controlling unwelcome emotionalism in times of public stress.

Because student disorders seem to be especially productive of highly emotional behavior (or "overreaction") by mature adults, they are especially appropriate occasions for the use of the lawyer's skills. Aside from their roles as litigators, lawyers have opportunities to make their influence felt not only as advisers to schools and colleges but also as officials, alumni and members of the public at large. Unfortunately, lawyers seldom have an opportunity to influence directly the behavior of students.

Within the councils of educational institutions, lawyers can be helpful in appraising the risk created by particular disorders, in shaping appropriate institutional responses, in planning to avoid disorders and in explaining the problems and solutions to the public. First, as dispassionate observers, lawyers should be equipped to maintain an awareness that small groups of students who seek to promote disorder lack the physical power to cause lasting harm to our society or its institutions by their own means. However much we may deplore the behavior of those students in seizing an administration building, we can recognize the fact that the seizure is symbolic; it is not itself inherently dangerous to the healthy survival of the institution. Mere buildings are a frill; their temporary loss is an inconvenience but not an occasion for panic. Symbolic seizures are occasions for the kinds of measured responses which may in turn symbolize our commitment to reason and our rejection of impulsiveness as a style of social action.

Don't Underestimate the Opportunities for Error

The real danger created by such a provocative act is, indeed, the risk of a destructive response by an impassioned administrator, inspired perhaps by the fear of an impassioned public. An appropriate task for a creative lawyer is the fashioning of a response that is suitable to the particular situation, not destructive, and sufficiently effective to relieve the public odium. It is appropriately a lawyer's task because it requires control of the emotions of fear, guilt and vanity, which threaten to cause decision makers to indulge themselves in harmful choices.

There is some temptation to underestimate the opportunities for making mistaken choices. The youthful disaffection is more widespread than it pleases us to believe. The number of young people seeking to exploit this situation is relatively small, but they are expressing the ideas and opinions of a substantial constituency. Those close to the situation can see readily that we have developed a substantial subsociety for adolescents who are attracted to values and attitudes quite different from those of adult society at large and who tend to be dominated by a suspicion of all things adult.

How and why this subsociety came to be are almost unfathomable questions. The phenomenon is not unique in world history, nor is it found only in our country. A number of hypotheses have been advanced, some reasonable and others obviously designed to cast blame on convenient enemies, but none of these is demonstrable. The only hard fact available is that of widespread youthful suspicion.

Wisdom, therefore, dictates that the effort be made to avoid situations which are likely to deepen this suspicion and involve larger numbers of

young people in an affray. By an impulsive response, an institution can inflict substantial harm on its relations with its own students, impair its educational processes, drive more young people into the camp of the alienated and thus lose for all of us the support and creative energies of some of our most talented youth. While these risks should not be overblown, neither should they be ignored.

Blue Uniforms, Brass Buttons Make Youth See Red

Significant is the risk of durable harm created by the use of police to stem disorder. It is often satisfying to many to see trespassing students harvest the crop of violence they have planted by their disorder; but this is a satisfaction a wise public will forgo wherever possible. The sight of the blue uniforms and brass buttons is to many young people what the sight of beards and beads is to the old. Police, however well intentioned, are better for disseminating alienation than for quelling student disorder. The exploiters of unrest are generally correct in their assessment that their positions with their contemporaries are enhanced by a harsh response from police and administrators. Their cause for demonstration, however childish it may have been, becomes gilded with martyrdom. Thus the processes of the criminal law should be used sparingly.

On the other hand, our institutions cannot be abject in surrender to every clamoring group of young people that imagines itself to have a cause. Our schools and universities must be kept open for those who seek to use them in the intended manner. If the students are agitated and suspicious, this is also true of the general public, which has a limited patience with disorder of any kind. Until we find a better way of controlling disruption, it will be necessary to punish some disrupters.

Academic sanctions often can be made sufficient and can be applied with dispatch, effect and general satisfaction. This should be the generally preferred method of dealing with misconduct that is primarily anti-institutional rather than antisocial. It has the substantial advantages of preserving insti-

tutional autonomy and avoiding confrontations between police and students. Effective intramural control does require a satisfactory tribunal, one which is capable of being firm but humane, while being impeccably fair in its procedures. While the right to counsel may not be regarded as essential to all such proceedings, it is the business of lawyers to assure that the rudiments of due process are observed.

Institutional tribunals can employ a variety of sanctions closely tailored to fit particular offenses. Impetuous students who intentionally damage property can be made to pay for it or to undertake a program of work designed to be compensatory to the institution as a condition of continuing their studies. Appropriate fines can be imposed on those who prevent others from continuing their studies. These sanctions can have a rehabilitatory effect; if fairly administered, they may serve to rebuild the damaged bonds of trust.

Expel Some, But Find Them Another School

Intransigent students who persist in their antagonism must be expelled. But an effort should be made to rehabilitate even the worst by trying to secure their admission to other institutions where they may find a more congenial setting in which to rebuild some relationship with the rest of us. It is not wise to "get tough" to the point of denying any access to further education to those who may be in greatest need of it, if they are prepared to indicate an inclination toward reform and respect for the rights of others. It is foolish to drive such young people into the streets, where there is nothing for them to do but become hardened revolutionaries or give themselves over to drugs. Furthermore, the presence of "reformed" students can have a healthy cooling effect on the attitudes of others.

Because it tends to inhibit this kind of tailored response, much of the so-called antiriot legislation enacted in recent months by Congress and the state legislatures is better designed to promote riots than to deter them.

An example of apparent success in the use of a prudent approach to dis-

ruptive activities is provided by the University of Chicago, which steadfastly refused to negotiate with trespassing students and expelled a number of the more aggressive, but refrained from the use of the police or the use of the shotgun approach to discipline. In time, the sit-ins there collapsed. That university avoided a major cataclysm despite a major effort to provoke one by some of its students. It remained open and effective, and it avoided an opportunity to contribute substantially to the alienation of its young people. It is to be hoped that many of those involved can be returned to the course of useful development. It is perhaps worth noting that the decisions there were made by Edward Levi, a fine lawyer of discerning judgment, who is the university's president.

Intramural control is not always possible. Obviously, this is true when large numbers of nonstudents are involved or when the institutional tribunal is so controlled by the agitators themselves that reasonable firmness in enforcement cannot be expected. In such circumstances, the use of the judicial contempt power should usually be preferred to the use of the criminal law. The injunction against continued trespass has the advantage of placing the individuals involved on clear notice that their behavior is regarded seriously. If a show cause order is first obtained, the individuals are given a public forum in court in which to air their grievances. It also has the advantage of placing the controversy beyond negotiation and emphasizes the futility of continued contumacy. No police or prosecutor need threaten the proper autonomy of the educational institution, and yet the court, once engaged, is obligated to protect the dignity of its mandate by imposing an appropriate sanction for contempt, whether the institution is in a position to insist upon it or not. Moreover, as long as the sanctions are very moderate, as they should be, they can be applied with dispatch and without the delay and obfuscation to which jury trial may be subject.

This is not to say that disruptive students are never suitable objects for the application of criminal sanctions. In-

deed, prosecutions as well as injunctions may sometimes be preferred to intramural imposition of sanctions, not because of the ineffectiveness of institutional sanctions, but because the court can be used as a lightning-rod to absorb the emissions of social conflict. In heated situations, the court is equipped to take much of the odium upon itself. In all situations, however, the wise judge should avoid the use of the police as much as possible and should apply sanctions no greater than necessary to deter the disorderly behavior. He, too, should not confirm the students in their apostasy by yielding to the temptation to impose massive penalties.

Counsel Against Unwise Restrictions

To some extent, lawyers can contribute to the avoidance of costly confrontations by counseling against unwise restrictions that become inviting targets for agitated and suspicious young people. The kinds of restrictions to be avoided must vary somewhat, of course, according to the status and locale of the institution. But it seems fair to say that a community which chooses to use its educational disciplinary system as a means of regulating such personal matters as hair length is effectively promoting confrontation and alienation. Even a school administration that hankers for confrontation would be well-advised to take its stand on higher ground.

Similarly, a legislature or university administration that attempts to prevent students from hearing a speaker whom they chose to hear is making a mistake. Whatever the proscribed message may be, it will surely get through, and it will only be handsomely romanti-

cized by its forbidden flavor. A decision against a speaker cannot accomplish anything more than a momentary satisfaction to those by and for whom it is made, but it is an open challenge to confrontation, giving the exploiters of unrest the highest possible ground. Even an insensitive decision maker, who eschews the virtues of free inquiry and free speech, is poorly advised to take such a stand. To some extent, the avoidance of confrontation can be best achieved by wise use of procedural arrangements. Lawyers can be useful in fashioning such devices as arbitration, mediation, ombudsmen and, where appropriate, greater student responsibility for decision making.

Finally, it is an appropriate task for lawyers to sound the call for self-control to the general public. This is a burdensome task, for the message is not always cheerfully received. The call to reason and self-control is likely to be irksome to those who have borne years of hardship in order to attain positions of power and who now seek the satisfactions of wielding it. It also tends to be irksome to the general public, which has a strong tendency to discount long-range consequences and to inflate the value of momentary satisfaction. It is equally irksome to many young people, for there seems to be a growing fashion among them to elevate emotional self-indulgence to a virtue. It may even be irksome to some young lawyers.

Many Law Students Find Law Dispassionate

I have had the opportunity in recent years to visit with a number of students who found the law annoyingly dispassionate, who were strongly tempted to simplify their lives and



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work by rejecting the discipline of detachment in favor of partisanship. Indeed, I have grown accustomed to the difficulty of trying to persuade these young people that detachment and control are the essence of their profession, and that effective professional service to any cause, however elevated it may be, requires the capacity to make balanced, dispassionate judgments. Despite these difficulties, I adhere to the view that this capacity is the greatest resource of the profession. And it is one that is much needed as we proceed to share our world with this righteous generation.

It remains inescapably true that these young people are ours; our future is theirs. Easy as it is to forget this in moments of irritation, it is a lawyer's task to make us remember.